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11
12 TRIAL COURTS OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF RIVERSIDE
14

15 JULIE GORCHYNSKI, M.D.,)

16 Plaintiff,)

17 vs.)

18)
19 COUNTY OF RIVERSIDE; RIVERSIDE)
20 GENERAL HOSPITAL; CITY OF RIVERSIDE;)
21 RIVERSIDE COUNTY CORONER'S OFFICE;)
22 CALIFORNIA DIVISION OF OCCUPATIONAL)
23 SAFETY & HEALTH; STATE OF)
24 CALIFORNIA; EXTERMINETICS PEST)
25 CONTROL CO., and DOES 1 through 500,)
inclusive)

26 Defendants.)

CASE NO. 257606

~~PROPOSED~~

ORDER GRANTING SUMMARY
JUDGMENT

27 ///

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

The motion of defendants County of Riverside, Riverside County Coroner's Office and Robert M. DiTraglia, M.D., for Summary Judgment or In The Alternative Summary Adjudication came on regularly for hearing before this Court in Department 8, Honorable Richard G. Van Frank presiding. Dana M. Jones and Michael A. Bell of Bell, Orrock & Watase, LLP, appeared as attorneys for defendants and moving parties County of Riverside, Riverside County Coroner's Office and Robert M. DiTraglia, M.D. Russell Kussman of Kussman & Whitehill appeared as attorney for plaintiff, Julie Gorchynski. David Pruitt of Carroll, Kelly & Trotter appeared as co-counsel for Robert M. DiTraglia, M.D.

After full consideration of the evidence, the separate statement of each party, and the authorities submitted by counsel, as well as counsels' oral argument, the Court finds there is no triable issue of material fact in this action as to moving parties and that the moving parties are entitled to Summary Judgment as a matter of law as to the second, fourth, seventh, eighth and ninth causes of action of plaintiff's Third Amended Complaint for the following reasons:

1. Defendants, in support of their motion, proffered the following facts which the Court finds undisputed:

UNDISPUTED FACT:

PROOF:

1. On February 19, 1994, Gloria Ramirez died at Riverside General Hospital during an unusual incident during which several health care providers became ill.

Coroner's Investigation Report attached as Exhibit "A" and Declaration of Robert M. DiTraglia, M.D.

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///

- 1 2. The Riverside County Coroner's Office commenced an investigation
2 to determine the cause of death of
3 Gloria Ramirez.
- 4
5 3. Robert M. DiTraglia, M.D. was the
6 pathologist involved in the
7 Riverside County Coroner's Office
8 investigation into the cause of
9 death of Gloria Ramirez.
- 10
11 4. As part of the death investigation
12 Dr. DiTraglia interviewed health
13 care providers who had become ill
14 including Julie Gorchynski.
- 15
16 5. Dr. DiTraglia conducted interviews
17 of health care providers, including
18 Julie Gorchynski, to assist in his
19 investigation into the cause of
20 death of Gloria Ramirez.
- 21
22 6. Upon interviewing Julie
23 Gorchynski, Dr. DiTraglia advised
24 her that he was conducting an
25 investigation into the cause of
26 death of Gloria Ramirez. Dr.
27 DiTraglia refused at all times to
28 release information regarding the
death investigation to Julie
Gorchynski.
- Declarations of Daniel Cupido and
Robert M. DiTraglia, M.D.
- Declaration of Robert M. DiTraglia,
M.D.
- Declaration of Robert M. DiTraglia,
M.D.
- Declaration of Robert M. DiTraglia,
M.D. Deposition of Julie Gorchynski,
page 217, lines 5-14, attached as
Exhibit "B."
- Deposition of Julie Gorchynski, page
213, lines 7-25; page 215, lines 24-
25; page 216, lines 1-12; page 233,
lines 22-25; page 234, lines 1-15
attached as Exhibit "C" and
Declaration of Robert M. DiTraglia,
M.D.
- Declaration of Robert M. DiTraglia,
M.D.
- Declaration of Robert M. DiTraglia,
M.D.

- | | |
|--|---|
| <p>1 9. Julie Gorchynski and Dr. DiTraglia
 2 never discussed preservation of
 3 evidence for her civil claim or any
 4 other purpose. Dr. DiTraglia never
 5 agreed to preserve evidence for
 6 Julie Gorchynski.</p> | <p>Declaration of Robert M. DiTraglia,
 M.D.</p> |
| <p>7 10. Dr. DiTraglia never rendered
 8 medical care to Julie
 9 Gorchynski.</p> | <p>Declaration of R. DiTraglia, Deposition
 of Julie Gorchynski page 214, line 22-
 25; page 215, line 1-12 attached as
 Exhibit "D."</p> |
| <p>10 11. Deputies of the Riverside
 11 County Coroner's Office are
 12 sworn peace officers.</p> | <p>Declaration of Daniel Cupido.</p> |
| <p>13 12. Julie Gorchynski never spoke
 14 with anyone from the Riverside
 15 County Coroner's Office other
 16 than Dr. DiTraglia.</p> | <p>Deposition of Julie Gorchynski page
 268, lines 5-17 attached as Exhibit
 "E."</p> |

17 2. Plaintiff, in opposition to defendant's motion, proffered evidence as
18 follows:

19 **UNDISPUTED FACT:**

- 20 1. On February 19, 1994, Gloria
21 Ramirez died at Riverside General
22 Hospital during an unusual incident
23 during which several health care
24 providers became ill.
- 25 2. The Riverside County Coroner's
26 Office commenced an investigation
27 to determine the cause of death of
28 Gloria Ramirez.
3. Robert M. DiTraglia, M.D. was the
pathologist involved in the
Riverside County Coroner's Office
investigation into the cause of
death of Gloria Ramirez.

DISPUTED/UNDISPUTED:

1. Plaintiff does not dispute.
2. Plaintiff does not dispute.
3. Plaintiff does not dispute.

- | | |
|---|--|
| 1 4. As part of the death investigation
2 Dr. DiTraglia interviewed health
3 care providers who had become ill
4 including Julie Gorchynski. | 4. Plaintiff does not dispute. |
| 5 5. Dr. DiTraglia conducted interviews
6 of health care providers, including
7 Julie Gorchynski, to assist in his
8 investigation into the cause of
9 death of Gloria Ramirez. | 5. Plaintiff disputes that (1) additional
discovery is needed (See Declaration of
Dana M. Jones) (2) This statements is
misleading because Dr. DiTraglia was
attempting to ascertain the cause of
the accident. |
| 10 6. Upon interviewing Julie
11 Gorchynski, Dr. DiTraglia advised
12 her that he was conducting an
13 investigation into the cause of
14 death of Gloria Ramirez. Dr.
15 DiTraglia refused at all times to
16 release information regarding the
17 death investigation to Julie
18 Gorchynski. | 6. Plaintiff disputes stating "Dr.
DiTraglia also conducted the
investigation to ascertain the cause of
the incident." |
| 19 7. Dr. DiTraglia never offered to
20 investigate the cause of the
21 incident on behalf of Julie
22 Gorchynski. | Plaintiff disputes. "Dr. DiTraglia
informed Julie Gorchynski, M.D. that
he would help her find the cause of her
injuries." |
| 23 8. Julie Gorchynski never discussed
24 her potential civil claim against the
25 County or any other governmental
26 agency with Dr. DiTraglia. | 8. Plaintiff disputes. The County and
the Coroner were aware of potential
litigation. The Arciniegas had already
made claims of a lawsuit and the
County was aware of Julie
Gorchynski's potential workers
compensation litigation. (Deposition of
Edelman, page 243:18 to 247:25-
248:14, Exhibit 1)" |
| 27 9. Julie Gorchynski and Dr. DiTraglia
28 never discussed preservation of
evidence for her civil claim or any
other purpose. Dr. DiTraglia never
agreed to preserve evidence for
Julie Gorchynski. | 9. Plaintiff disputes. "Dr. DiTraglia
informed Julie Gorchynski, M.D. that
he would help her find the cause of her
incident and report that to her."
(Declaration of Julie Gorchynski, M.D.,
paragraph 4) |
| 10. Dr. DiTraglia never rendered
medical care to Julie
Gorchynski. | 10. Undisputed. |

1 11. Deputies of the Riverside
2 County Coroner's Office are
3 sworn peace officers.10.
Undisputed.

11. Undisputed.

4 12. Julie Gorchynski never spoke
5 with anyone from the Riverside
6 County Coroner's Office other
than Dr. DiTraglia.

12. Plaintiff disputes. "Julie
Gorchynski, M.D., also spoke with
Phillip Edelman, M.D. who is working
for Riverside County. Declaration of
Julie Gorchynski, M.D., Paragraph 4)"

7
8 **ADDITIONAL FACTS BY PLAINTIFF IN OPPOSITION**
TO MOTION FOR SUMMARY JUDGMENT AND DEFENDANTS' REPLY

9 13. Riverside County Coroner's
10 Office negligently investigated the
11 cause of the incident in Gloria Ramirez'
death.

13. Declaration of Jack Sawicki,
¶8.

12 14. Riverside County Coroner's
13 Office, through its employees and
14 agents, agreed to assist plaintiff, Julie
Gorchynski, M.D. in ascertaining the
cause of her injuries.

14. Declaration Julie Gorchynski,
M.D., ¶4.

15 15. Julie Gorchynski, M.D. relied
16 upon the Coroner's statement to her
17 and the public statements that it would
18 investigate the cause of the incident,
and did not commence her own
investigation.

15. Declaration Julie Gorchynski,
M.D., ¶5.

19 15. (sic) Riverside County
20 Coroner's Office spoliated relevant and
21 critical evidence that would have
22 assisted plaintiff in identifying the
cause of her injuries.

15. Declaration of Jack Sawicki,
¶7; Declaration of Rudolph Moyer,
¶¶4-5.

23 16. Riverside County Coroner's
24 Office, through its employees,
25 spoliated much critical and relevant
26 evidence by failing to adequately
preserve such evidence and allowing
such evidence to deteriorate.

16. Declaration of Jack Sawicki,
¶7; Declaration of Rudolph Moyer,
¶¶4-5.

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1 17. The spoliation of evidence by
2 the Coroner occurred well after the
3 investigation by the coroner was
4 completed.

5
6 18. Philip Edelman, M.D., was an
7 agent of the Riverside County and was
8 retained by the Riverside County to
9 conduct an investigation.

10 19. Philip Edelman, M.D. and the
11 Riverside County created a conflict of
12 interest situation by interjecting
13 themselves into the care and treatment
14 of Julie Gorchynski, M.D.

15 20. Philip Edelman, M.D., did not
16 disclose his affiliation with Riverside
17 County or State to Julie Gorchynski,
18 M.D.

19 21. The County asked the State to
20 investigate the incident while working
21 "in consultation" with RGH.

22 22. The State was concerned
23 regarding its Malathion Spraying
24 program.

25 23. The County was also involved
26 with the Malathion Spraying program.

27 24. One possible cause that was
28 discussed by the defendants was
Gloria Ramirez' exposure to
organophosphates, a class of
compounds which involves Malathion.

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17. Press release by Scotty Hill,
Ex. 2; Dec. of Kent Livingston, Ex. 3;
Deposition of Kent Livingston, Ex. 4,
pgs. 126:4-23, 40:14-42:14, 107:19-
23; Transcript of May 12 & 13,
proceedings of, Ex. 5; Invoices of
storage, Ex. 6.

18. Deposition of Philip Edelman,
M.D., pg. 73:13-73:16; 135:7-135:15,
Ex.1.

19. Deposition of Edelman, pg.
247:16-247:24, 252:12-253:23, Ex.
1; Deposition of Osorio, pg. 39:5-40:1,
71:7-73:10, Ex. 7.

20. Deposition of Julie
Gorchynski, M.D., Vol. 3, pg. 137:3-8,
Ex. 8; Dec. of Julie Gorchynski, M.D.
¶4.

21. February 28, 1994 letter by
Brad Gilbert, Ex. 9.

22. 2/23/94 E-Mail, Ex. 16.

23. Depo of Osorio, pg. 54:8-24,
Ex.7; 2/24/94; E-Mail, Ex. 11.

24. 2/24/94 E-Mail, Ex. 11.

1 25. The County and the State
2 were in constant communication and
3 the County was requesting assistance
4 from the State in helping to weather
5 the investigation. Specifically, the
6 County believed it was being "killed".
7 Further, the County recommended the
8 use of Edelman.

9 26. Ana Osorio, the state agent,
10 and Phil Edelman, the County
11 consultant and State consultant,
12 believed that they would help the
13 County "weather the investigation"
14 and work closely together.

15 27. The State consulted with the
16 county consultant, Phil Edelman, M.D.
17 on which samples to take. Edelman
18 recommended not taking fat biopsies
19 to look for organophosphates
20 (pesticides).

21 28. The State and County
22 employees worked closely together
23 during the investigation.

24 29. Despite evidence to the
25 existence of a toxic event, the State
26 still improperly reported to the public a
27 misleading and false report that the
28 incident arose out of mass hysteria.

29 30. The State believed that the
30 incident was a delicate issue with
31 "political themes."

32 31. The State report was cleared
33 and reviewed by the County prior to its
34 official release.

35 **ADDITIONAL MATERIAL FACT:**

36 32. At the time of determining the
37 cause of death, the coroner felt
38 pressured to identify a cause of
39 death.

25. 2/24/94 E-Mail, Ex. 11; Depo
of Osorio, pg. 80:6-80:15, Ex. 7;
2/23/94 letters by Gilbert, Ex. 9.

26. 2/24/94 E-Mail, Ex.11.

27. 2/24/94 E-Mail, Ex.11;
Edelman depo, pg. 252:17-253:23,
274:6-11, 275:4-9, 275:14-18, Ex. 1.

28. 2/24/94 E-Mail, Ex.11; 3/2/94
E-Mail, Ex., 12; 2/29/94 fax, Ex.13.

29. State Report, Ex. 14; Sept. 7,
1994 letter by various physicians to
Ana Osorio, Ex. 15.

30. 3/2/94 E-Mail, Ex. 12;
2/24/94 E-Mail, Ex. 11.

31. 2/23/94 letter by Gilbert, Ex.9.

EVIDENCE

Deposition of Daniel Cupido, pg.
369:18-24.

- 1 33. The investigation surrounding
2 the death of Gloria Ramirez was
3 a politically sensitive issue; with
4 political themes. Deposition of Daniel Cupido, pg.
5 368:14-21; 369:1-6.
- 6 34. The Coroner maintained the
7 cause of death as being cardiac
8 dysrhythmia due to acute renal
9 failure due to cervical cancer --
10 i.e., "natural causes" even
11 though this conclusion was
12 illogical, irrational, and not
13 medically sound. Supplemental Declaration of William
14 O'Riordan, M.D., ¶4; Exhibit 17,
15 Death Certificate; Ex. 20, press
16 release of April, 1994.
- 17 35. The Coroner felt it was a relief to
18 obtain a cause of death. Deposition of Daniel Cupido, pg.
19 370:8-11.
- 20 36. The Coroner voluntarily
21 published the Lawrence
22 Livermore DMSO report in
23 November, 1994 in an effort to
24 assist the injured workers who
25 were present at the hospital on
26 February 19, 1994. Deposition of Daniel Cupido, pg.
27 291:4-16, 380:19-23, 381:3-6,
28 384:12 - 385:1.
37. The Coroner had heard that the
hospital was a potential cause of
the death but did nothing to
investigate it. Deposition of Daniel Cupido, pg.
374:8-15.
38. The Coroner had heard as early
as a month after the incident,
that a potential uncapped drain
existed at the hospital but did
nothing to investigate the
hospital. Deposition of Daniel Cupido, pg.
395:21 - 396:3; 374:8-15.
39. The Coroner knew that it was
important to preserve evidence
from RGH and also knew that it
was important to preserve
evidence from RGH in order to
have a fair and impartial
investigation. Deposition of Daniel Cupido, pg.
376:1-7; Deposition of Scotty Hill, pg.
140:4-16.

28 ///

1 40. The Coroner knew from the very
2 beginning that litigation would
3 be expected or inevitable in
relation to the incident.

Deposition of Daniel Cupido, pg.
375:12-18, 440:3-8.

4 41. Even though the Coroner had
5 retained an expert by the name
6 of Dr. Peat from the very
7 beginning and that Dr. Peat
8 reviewed the entire file and
9 indicated that he had prepared a
10 report, and that Dr. Peat was
11 hired for his expertise in forensic
12 toxicology, the Coroner never
13 requested a report from Dr. Peat,
14 never obtained a report from Dr.
15 Peat, never asked for the report
that Dr. Peat had prepared, and
never questioned Dr. Peat as to
why a report had not been
provided or where the report
was that Dr. Peat referred to in
his correspondence and never
obtained oral findings from Dr.
Peat.

Deposition of Daniel Cupido, pg.
90:14 - 91:2, 92:13-19, 97:19 -
98:16, 397:8 - 398:2, 398:13-18,
400:13-20; Exhibit 18,
correspondence from Dr. Peat to
Daniel Cupido indicating report had
been prepared.

16 42. The Coroner destroyed
17 substantial evidence that was
18 located at the Broco facility
19 despite knowledge of litigation
and the obligation to preserve
evidence.

Declaration of Jack Sawicki, ¶7;
Deposition of Daniel Cupido, pg.
414:3-18; 429:20-25; 430:25 -
431:7.

20 43. The Coroner, through its agents,
21 told Julie Gorchynski that they
22 had determined the chemical
23 that was the cause of the
24 incident and were going to
reveal it the next day but never
did.

(Deposition of Julie Gorchynski, pg.
117:24 - 118:23; 249:12-24;
Supplemental Declaration of Julie
Gorchynski, ¶ 2-4)

25 44. The Coroner was under an
26 ethical obligation to tell Julie
27 Gorchynski if Gloria Ramirez had
28 died of a toxin.

Deposition of Dr. DiTraglia, pg. 139:2-
9.

- 1 45. The Coroner's office had at least
2 six to twelve conversations with
3 Julie Gorchynski regarding the
4 cause of the incident. The
5 Coroner's office informed Julie
6 Gorchynski that the Coroner
7 would investigate the cause of
8 the incident and would inform
9 Julie of its findings in order to
10 assist her in her diagnosis and
11 treatment.
- 12 46. The Coroner's investigation
13 extended beyond the scope of
14 merely the death of Gloria
15 Ramirez, and included an
16 investigation of the incident at
17 RGH.
- 18 47. Julie Gorchynski has continued
19 to suffer symptoms and toxic
20 exposure.
- 21 48. Scotty Hill delegated the
22 investigation to Daniel Cupido.
- 23 49. Daniel Cupido, thereafter
24 delegated the investigation to
25 others.
- 26 50. The Coroner's employees
27 followed normal procedures and
28 rules established by Scotty Hill
for the investigation.
51. The Coroner ruled out a
homicide from the early stages
of the investigation.
52. The Coroner's obligation was
only to look at the cause and
manner of death.
53. The Coroner stored many items
from Riverside General Hospital
and Parkview Hospital and never
tested them.
- Supplemental Declaration of Julie
Gorchynski, M.D., ¶ 2-5; Deposition
of Julie Gorchynski, pg. 248:13 -
249:5.
- Exhibit 19, portion of Dr. DiTraglia's
file for the "Incident/RGH" by the
Coroner; Deposition of Dan Cupido,
pg. 279:17-22; Ex. 21; press release
of November 3, 1994.
- Supplemental Declaration of Julie
Gorchynski, M.D., ¶ 5.
- Deposition of Scotty Hill, pg. 51:23 -
52:12.
- Deposition of Daniel Cupido, pg.
82:15-17; 85:11 - 85:15.
- Deposition of Daniel Cupido, pg.
85:11-15; Deposition of Scotty Hill,
pg. 51:23 - 52:12.
- Deposition of Daniel Cupido, pg.
267:22 - 269:15.
- Deposition of Daniel Cupido, pg.
274:7 - 275:16; 350:13-17; 352:16-
25.
- Deposition of Daniel Cupido, pg.
414:3-18; 425:7-21; 429:20-25;
Itemization Report from the
Declaration of Jack Sawicki.

1 54. The cause of the incident was
2 exposure to organophosphates,
3 due to negligence on the part of
4 the hospital in its duty to
maintain and operate in a safe
and non-toxic facility.

Supplemental Declaration of William
O'Riordan, M.D., ¶ 1-2; Supplemental
Declaration of Ashok Jain, M.D.

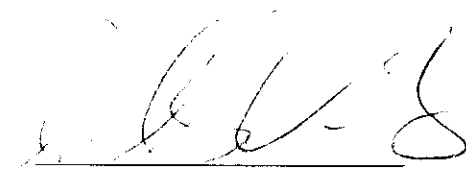
5 55. The Coroner held a press
6 conference blaming the "smell of
7 death" as the cause of the
8 incident, something the
9 Coroner's pathologist was
unfamiliar with and had not
spoken to the Coroner about
such matters.

Deposition of Robert DiTraglia, pg.
195:13 - 197:17; 201:16-18.

10 The evidence proffered in opposition to defendant's motion is not sufficient to
11 raise a triable issue of material fact. All inadmissible evidence proffered by
12 plaintiff was disregarded. As a matter of law, neither the County of Riverside,
13 Riverside County Coroner's Office or Robert M. DiTraglia, M.D., owed a duty to
14 plaintiff, Julie Gorchynski. Additionally, the provisions of *Government Code*,
15 §820.2 and §821.6 immunize the County of Riverside, Riverside County
16 Coroner's Office and Robert M. DiTraglia, M.D., from suit.
17

18 IT IS THEREFORE ORDERED that the said Motion for Summary Judgment is
19 granted and that judgment shall be entered forthwith in favor of defendants the
20 County of Riverside, Riverside County Coroner's Office and Robert M. DiTraglia,
21 M.D., and against plaintiff, Julie Gorchynski.
22

23 DATED:
24

25 
26 Judge of the Superior Court
27
28

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